

JUDGE ENGELMAYER

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.,

Plaintiff,

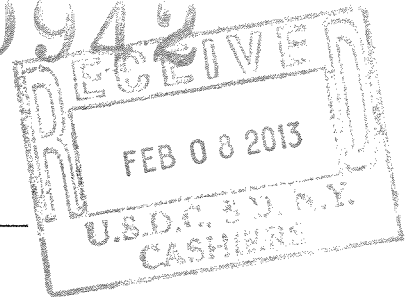
v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR; and BUREAU OF LAND  
MANAGEMENT,

Defendants.

13 CV 0942

12 CIV \_\_\_\_\_  
ECF Case



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Defendants Department of Interior (Interior) and its bureau, the Bureau of Land Management (BLM), violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, when they failed to timely disclose responsive records requested by plaintiff Natural Resources Defense Council, Inc. (NRDC) concerning the appraisal of coal leases in the Powder River Basin.

2. NRDC filed a FOIA request with Interior and BLM on September 21, 2012, seeking documents related to BLM's appraisal of coal tracts in the Powder River Basin, and

requesting that defendants waive the fee they would otherwise charge for search and production. BLM acknowledged receipt of the request on September 28, 2012.

3. The Powder River Basin produces almost half of the nation's coal, nearly all of which is controlled and leased by BLM. Under the Mineral Leasing Act, 30 U.S.C. § 201(a)(1), BLM shall not accept less than fair market value for the sale of a coal lease. The records requested by NRDC pertain to BLM's process for determining whether the lease prices for coal tracts in the Powder River Basin reflect fair market value.

4. BLM and Interior have failed to produce any documents in response to NRDC's FOIA request, failed to provide a response as to whether they will produce documents, and failed to provide a timeframe for production.

5. NRDC seeks a declaration that defendants have violated FOIA by failing to produce responsive documents by the statutory deadline and an injunction ordering that defendants disclose without further delay all non-exempt, responsive records to NRDC. NRDC also seeks a declaration that, pursuant to FOIA, it is entitled to a fee waiver in connection with its FOIA request.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is proper in this district because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

#### **THE PARTIES**

8. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with more than 357,000 members. NRDC engages in research,

advocacy, media, and litigation related to improving management of natural resources on public lands.

9. Defendants BLM and Interior are federal agencies within the meaning of FOIA, 5 U.S.C. § 551(1), and have possession or control of the records that NRDC seeks in this action.

#### **STATUTORY AND REGULATORY FRAMEWORK**

10. FOIA requires that federal agencies release, upon request, information to the public, unless one of nine specific statutory exemptions applies. 5 U.S.C. § 552.

11. Under FOIA, an agency has twenty business days to respond to a FOIA request. 5 U.S.C. § 552(a)(6)(A).

12. If an agency does not timely respond to a FOIA request, the requestor is deemed to have exhausted administrative remedies and may immediately seek judicial relief. 5 U.S.C. § 552(a)(6)(C)(i).

13. Under FOIA, documents shall be provided at no charge, or at a reduced charge, if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.” 5 U.S.C. § 552(a)(4)(A)(iii). Fees shall also be limited to reasonable standard charges for document duplication when the request is made by a representative of the news media. *Id.* § 552(a)(4)(A)(ii)(II).

#### **FACTS**

14. The Powder River Basin contains one of the most significant coal deposits in the world, almost all of which is controlled and leased by BLM, a bureau of Interior. It currently produces nearly half of the nation’s coal, and represents approximately one-third of the country’s total coal reserves.

15. BLM leases coal tracts on public lands within the Powder River Basin to private coal producers. After BLM and the coal industry designate parcels for leasing, BLM prepares an appraisal of the tract's value. 43 C.F.R. §§ 3420.3-1, 3422.1. The tracts are then offered for auction, and the highest qualified bidder exceeding the confidential price is awarded the lease. *Id.* § 3422.3-2. Tracts sell for hundreds of millions of dollars; recently, a lease was awarded to Peabody Energy for \$793 million. However, the price per ton of coal can be as low as \$1 per ton.

16. Under the Mineral Leasing Act, 30 U.S.C. § 201(a)(1), "[n]o bid shall be accepted which is less than fair market value, as determined by the Secretary [of Interior], of the coal subject to the lease." A recent study by the Institute for Energy Economics & Financial Analysis, however, has estimated that BLM may have missed out on approximately \$30 billion in revenues over the past thirty years due to a flawed bidding process.

17. NRDC's mission is to protect public health and the environment. Related to that mission, NRDC has engaged in research, advocacy, litigation, and media aimed at improving management of the coal tracts in the Powder River Basin.

18. On September 21, 2012, NRDC sent a FOIA request to BLM and Interior, via priority U.S. mail and electronic mail, to both BLM's Washington, D.C. FOIA office and BLM's Wyoming State Office. *See* 43 C.F.R. § 2.10.

19. NRDC's FOIA request seeks information related to all lease sales since 1990 in the Powder River Basin, including (1) a copy of the Presale and Post-Sale Appraisal Report for each lease; (2) a copy of any documentation related to all Presale and Post-Sale Appraisal Reports; (3) a copy of the certified Geological and Engineering Data Reports that form the basis of the appraisal report for each lease; (4) any other documentation related to the appraisals; and

(5) BLM guidance, handbooks, manuals, and other documents with information on estimating the value of coal tracts not publicly available.

20. NRDC requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure of the requested information is in the public interest. NRDC also noted that it was entitled to a reduction of fees under FOIA as it is “a representative of the news media” for the purposes of 5 U.S.C. § 552(a)(4)(A)(ii)(II).

21. BLM’s Wyoming State Office confirmed receipt of NRDC’s FOIA request on September 21, 2012, via letter dated September 28, 2012.

22. Pursuant to the deadline established in 5 U.S.C. § 552(a)(6)(A)(i), BLM’s response to NRDC’s FOIA request was due on October 16, 2012.

23. To date, defendants have failed to produce any documents in response to NRDC’s FOIA request, failed to provide a response as to whether they will produce documents, and failed to provide a timeframe for production. Defendants have also failed to respond to NRDC’s fee waiver request.

24. NRDC seeks a declaration that defendants have violated FOIA by failing to produce responsive documents by the statutory deadline. NRDC also seeks an injunction ordering that defendants promptly disclose all non-exempt, responsive records to NRDC. In the event that defendants determine that certain responsive records are exempt from disclosure, NRDC seeks an injunction ordering defendants to produce a log identifying any documents or parts thereof that they withhold and the basis for the withholdings.

25. NRDC seeks a declaration that it is entitled under FOIA to a waiver or reduction of defendants’ search and production fees with respect to its request. NRDC has a demonstrated ability and intent to analyze and convey information in the requested records to a broad public

audience. Disclosure of the requested records will contribute significantly to public understanding of the process for appraising coal reserves in the Powder River Basin. NRDC is a not-for-profit organization with no commercial interest in the requested records. NRDC is also a representative of the news media, and disseminates information to its members and the general public through reports.

26. NRDC brings this action on its own behalf and on behalf of its members. NRDC and its members have been and continue to be injured by defendants' failure to timely provide responsive records and failure to respond to NRDC's fee waiver request. The requested relief will redress these injuries.

#### **CLAIM FOR RELIEF**

27. NRDC incorporates by reference all preceding paragraphs.

28. Defendants violated their statutory duty under FOIA, 5 U.S.C. § 552(a), to release all non-exempt, responsive records to NRDC.

29. NRDC has a statutory right under FOIA to immediately obtain all requested records that are not exempt from disclosure under FOIA at no cost, or in the alternative, at reduced cost.

#### **REQUEST FOR RELIEF**

WHEREFORE, NRDC respectfully requests that this Court enter judgment against defendants as follows:

A. Declaring that defendants have violated FOIA by failing to respond and produce non-exempt records responsive to NRDC's FOIA request by the statutory deadline;

B. Declaring that NRDC is entitled to a waiver of search and production fees, or in the alternative, a reduction of search and production fees with respect to its request;

C. Ordering that defendants disclose the requested records to NRDC without further delay;

D. In the event that defendants determine that certain responsive records are exempt from disclosure, ordering defendants to produce a log identifying any documents or parts thereof that they withhold and the basis for the withholdings;

E. Awarding NRDC its costs and attorneys' fees; and

F. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 8, 2013

Respectfully submitted,

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